IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1670 OF 1998

Meeta Rahul Malik, of Mumbai]
Indian Inhabitant, residing]
at 13, Basera (AI), Bldg.No.]
47, Swami Samarth Nagar,]
Andheri (W), Mumbai-400053]..Petitioner

Vs.

Air India Limited, a Government]
of India undertaking, having]
its office at Backbay Reclamation]
Nariman Point, Mumbai-400021]..Respondent

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Mr.Mohan Bir Singh with Ms.Pooja Jalan with
Ms.Kunti Jhaveri with Jayesh Vyas i/b
M/s.Bilawala & Co. for Petitioner
Mr.Sandeep Dasgupta i/b M/s. Bhasin and Co.
for Respondent

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CORAM : DR.S.RADHAKRISHNAN AND SMT.V.K.TAHILRAMANI,JJ.

DATE : NOVEMBER 24, 2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. In this petition under Article 226 of the Constitution of India, the Petitioner has prayed for directions to the Respondent to restore to the Petitioner her seniority and the salary and the rates of flying allowances applicable to her.

2. The Petitioner joined Respondent-Air India on 7.6.1982 and she was placed between C.Miranda (Nee Ms.C.T.Periera) and V.Bhuse in the seniority list of Air Hostesses. In May, 1988, the Petitioner met with an accident in the flight during the course of her flight duties. While she was in the aircraft during the course of her duties, she sustained a head injury. On account of the said head injury, the Petitioner had to undergo extensive medical treatment including psychiatric treatment. During this long period, the Petitioner was treated in the Air India hospital or in hospitals approved by Air India. In July/August, 1997, the Petitioner regained fitness

and re-offered her services to the Respondent as an Air Hostess. On 12.8.1997, the Petitioner was reinstated by the Respondent. However, the Petitioner was not paid the flying allowances as paid to C.Miranda and V.Bhuse. The Petitioner sent representation that she is entitled to the allowances as paid to C.Miranda and V.Bhuse, that is she is entitled to the allowances as applicable to Grade 25 and not as applicable to Grade 16 in which she had been put. In October, 1997, the Petitioner's allowances were revised to those applicable to Grade 25. The Petitioner was also paid arrears of difference in allowances in August and September, 1997. The Petitioner continued to be paid allowances as applicable to Grade 25 upto July, 1998.

3. However, on 24.7.1998, the Petitioner received a D/R message indicating that she is in Grade 18 and that the rate of allowances applicable to her, are reduced to those applicable to Grade 18. By letter dated 5.8.1998, the Petitioner objected to the said change without any notice or hearing. Being aggrieved by the action of the Respondent, the Petitioner filed this petition.

4. It is the case of the Petitioner that the Petitioner and the Respondent are covered by the Award (Known as Khosla Award) of N.I.T. presided over by Justice Khosla (Retired). The Award covers various items including payment of annuity to medically unfit cabin crew. The Award envisaged that cabin crew medically unfit to perform flying duties, may be provided ground jobs and upon such assignment, the crew shall have opportunities for advancement in their ground jobs equal to those of other employees. Alternatively, the medically unfit cabin crew may opt for annuity based on their last drawn basic pay subject to the conditions mentioned in the Award. The Award requires the cabin crew opting for either of two options to re-offer his/her services as cabin crew when he/she regains fitness. On the cabin crew opting to re-offer services, the Company is obliged to reinstate him/her in the grade and seniority held by him/her prior to the disablement. The terms of this benefit apply to pilots as well as cabin crew equally.

5. The Award is still valid and subsisting in respect of annuity. That the Khosla Award would apply to the case of the Petitioner is not denied by

the Respondent nor is it denied that the Petitioner sustained injury during the course of her duties in the aircraft.

6. Mr.Mohan Bir Singh, the learned counsel for the Petitioner submitted that the promotion contemplated by the policy of the Respondent was a time bound promotion and the Petitioner cannot be denied the promotion on completion of requisite service by her. Thus, he submitted that availing of leave on medical grounds, is not a valid reason for denying a time bound promotion. Shri.Singh also submitted that after the promotion, there was no change in the nature of duties carried out by the candidate and the entire purpose behind the promotion policy was to avoid stagnation.

7. It is not denied by Mr.Sandeep Dasgupta, the learned counsel for the Respondent that the promotion policy essentially contemplates a time bound promotion. The promotion policy itself also makes this amply clear. For a candidate to be denied a time bound promotion, the leave availed of, must be found to be objectionable, for instance being against the Rules, detrimental to the functioning of the

Respondent or indicative of her absence as lack of her commitment to the job. Moreover, such objection should at least, have been brought to the candidate's notice. In the present case, the Petitioner has been reverted from Grade 25 to a lower Grade without hearing the Petitioner or asking the Petitioner to show cause which is against the principles of natural justice and opposed to good conscience.

8. The Respondent in their affidavit-in-reply has stated that at the time of the accident, the Petitioner was in Grade 15 so also at the time of opting for annuity, she was in Grade 15 and hence, after she became medically fit to rejoin the Respondent, she was placed in Grade 15. It is the case of the Respondent that they inadvertently paid the Petitioner allowances on the basis of total number of years of service from the date of her appointment i.e. in 1982 without deducting the period of four years from 7.7.1993 to 11.8.1997 during which period, the petitioner had proceeded on annuity and had not rendered actual effective and active service to the Respondent. When the Respondent realised their mistake in July, 1998, the said mistake was rectified. Mr.Dasgupta further

submitted that as per the Khosla Award in case of medically unfit crew members, the crew members grade and seniority is to be protected and as the Petitioner at the time of accident and annuity was in grade 15, she was given the same grade on rejoining duties. However, we find that even if we accept the contention of Mr.Dasgupta that the Petitioner's grade has been protected, we find that the Petitioner's seniority has not been protected.

9. The Petitioner admittedly falls in the category of existing cabin crew. When the Petitioner joined duties she was placed in the seniority list between C.Miranda (Nee Ms.C.T.Periera) and V.Bhuse. Thereafter, the Petitioner and C.Miranda and V.Bhuse came to be promoted from time to time. However, thereafter, C.Miranda and V.Bhuse came to be promoted to Grade 25 whereas the Petitioner was reverted from Grade 25 to a lower Grade. The Khosla Award provides that the crew members seniority should be protected. However, by putting the Petitioner in grade 15, her seniority is not protected and in fact, C.Miranda and V. Bhuse and several others air hostesses who were in the same batch or junior to the Petitioner became senior to her on account of the Petitioner being

placed in a grade lower than 25. It is not disputed by the Respondent that the Petitioner's personal file records are good and there is nothing against the Petitioner. It is also admitted that the Petitioner had sustained injuries in the aircraft itself while she was on duty. However, according to the Respondent, the Petitioner was not promoted to Grade 25 as she was on long medical leave for about four years.

10. Mr.Singh, further submitted that in the case of another Air Hostess who was on long leave of 162 days due to medical reasons, this Court held that if the Petitioner therein availed of leave properly and for justified reasons on genuine medical ground, her promotion could not be withheld. The said decision was delivered in **Writ Petition No.499 of 2000 dated 11th April, 2001 in Komila Bains Vs. Air India Limited.** The facts in the present case and the facts in the aforesaid case are similar and hence, the ratio of the aforesaid decision would apply to the facts of the present case.

11. In the present case, the medical leave availed of by the Petitioner was sanctioned by the

Respondent. The Respondent has not alleged that the Petitioner availed of leave improperly, unwarrantedly and dishonestly. The Respondent has not even remotely alleged that the leave of the Petitioner on medical ground was not justified. In fact, the reason for the Petitioner availing of medical leave was on account of injuries and complications therefrom arising out of an accident sustained by the Petitioner while on duty. Thus, we find that there is nothing on record to show that the leave availed of by the Petitioner was against the rules or dishonest or unjustified.

12. We have also noticed that the promotion policy itself did not disentitle the candidate from being entitled to promotion merely on the ground of leave having been availed of by the candidate. Mere availing of leave if authorised, proper and not indicative of the candidate’s lack of commitment to duty, cannot, in our view, disqualify the candidate from being promoted under the promotion policy. In the circumstances of the present case, it cannot be said that the Petitioner availed of leave on frivolous or unwarranted reasons. In the facts and circumstances of this case, we hold that the

Petitioner was wrongly denied promotion.

13. In the circumstances, we hold that the Respondent's refusal to grant promotion to the Petitioner, is contrary to law and the promotion policy, it is arbitrary and unreasonable and the Petitioner deserves to be promoted and she deserves to be placed in the list of seniority between C.Miranda (Nee Ms.C.T.Periera) and V.Bhuse.

14. Accordingly, Rule made absolute in terms of prayer clause (d) of the petition. No order as to costs.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]